

# EXHIBIT 9

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

---

L.E., by his next friends and  
parents, SHELLEY ESQUIVEL and  
MARIO ESQUIVEL

Plaintiff

v.

No.

BILL LEE, in his official

3:21-cv-00835

capacity as Governor of

Tennessee; PENNY SCHWINN, in her

official capacity as the

Tennessee Education

Commissioner; TENNESSEE STATE

BOARD OF EDUCATION; SARA HEYBURN

MORRISON, in her official

capacity as the Executive

Director of the Tennessee State

Board of Education; NICK

DARNELL, MIKE EDWARDS, ROBERT

EBY, GORDON FERGUSON, ELISSA

KIM, LILIAN HARTGROVE, NATE

1 MORROW, LARRY JENSEN, DARRELL  
2 COBBINS, and EMILY HOUSE, the  
3 individual members of the  
4 Tennessee State Board of  
5 Education, in their official  
6 capacities; KNOX COUNTY BOARD OF  
7 EDUCATION a/k/a KNOX COUNTY  
8 SCHOOLS a/k/a KNOX COUNTY SCHOOL  
9 DISTRICT; ROBERT M. "BOB"  
10 THOMAS, in his official capacity  
11 as Director of Knox County  
12 Schools

13 Defendants

14 -----

15 VIDEOCONFERENCE DEPOSITION OF

16 JONATHAN FRANKLIN HIGGINS

17 DATE: Monday, July 25, 2022

18 TIME: 11:15 a.m.

19 LOCATION: Remote Proceeding

20 Washington, D.C. 20005

21 REPORTED BY: Janel B. Folsom, Notary Public

22 JOB NO.: 5338660

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF L.E., BY HIS NEXT FRIENDS AND  
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A/K/A KNOX COUNTY SCHOOLS A/K/A KNOX COUNTY SCHOOL  
DISTRICT AND ROBERT M. "BOB" THOMAS, IN HIS CAPACITY  
AS DIRECTOR OF KNOX COUNTY SCHOOLS:

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A P P E A R A N C E S (Cont'd)

ON BEHALF OF DEFENDANTS BILL LEE, IN HIS OFFICIAL  
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HER OFFICIAL CAPACITY AS THE TENNESSEE EDUCATION  
COMMISSIONER; TENNESSEE STATE BOARD OF EDUCATION; SARA  
HEYBURN MORRISON, IN HER CAPACITY AS THE EXECUTIVE  
DIRECTOR OF THE TENNESSEE BOARD OF EDUCATION; AND NICK  
DARNELL, MIKE EDWARDS, ROBERT EBY, GORDON FERGUSON,  
ELISSA KIM, LILLIAN HARTGROVE, NATE MORROW, LARRY  
JENSEN, DARRELL COBBINS, AND EMILY HOUSE, THE  
INDIVIDUAL MEMBERS OF THE TENNESSEE STATE BOARD OF  
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ALSO PRESENT:

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Clark L. Hildabrand, Esq., Office of Tennessee  
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Brandon Townsend, Office of Tennessee Attorney  
General (by videoconference)

Jerry Curran, Technician, CMI Production Services  
(by videoconference)

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1 and sex.

2 Q Okay. So the wellness course includes sex  
3 education, as well as physical and mental health? Is  
4 that --

5 A Yes.

6 Q -- right? Okay. But physical education is  
7 more like a gym class?

8 A Yes.

9 Q Okay. But you can opt out of the physical  
10 education class by playing a varsity sport. Is that  
11 right?

12 A Yes.

13 Q But you cannot opt out of the wellness  
14 class. Is that right?

15 A No, sir.

16 Q Okay. When do students generally take the  
17 wellness class?

18 A Well this upcoming year, I think we're --  
19 it's going back to a sophomore class. But in the  
20 years prior, it was the freshman class.

21 Q Okay. You are the golf coach of both the  
22 boys' team and the girls' team, correct?



1           A     Yes, sir.

2           Q     And as you said, you're the only golf coach  
3 at Farragut High School currently, right?

4           A     Yes, sir. I've got a volunteer helping me  
5 right now, while I'm on vacation.

6           Q     Okay. What are your responsibilities as the  
7 golf coach?

8           A     To set up practices, conduct practices, set  
9 up matches, and give lineups for matches, and oversee  
10 matches and district tournament and region tournament.

11          Q     Okay. Sounds like a lot to do alone. And  
12 does Farragut High School have a junior varsity golf  
13 team?

14          A     The golf season is tricky. So we don't  
15 technically have a junior varsity team, but if we  
16 needed to play a JV match or two, we probably could.

17          Q     What do you mean that the season is tricky?

18          A     You get 14 dates to play golf matches. And  
19 in -- in those 14 days are included are JV matches.  
20 So most teams don't have JV matches.

21                 We don't play JV matches 'cause they have to  
22 played on the same day and most teams don't have two

1           A     ESPN, Sports Illustrated, Golf Digest,  
2 things like that.

3           Q     Okay. Do you read Golf Digest to help you  
4 as a coach of golf?

5           A     And as a player of golf.

6           Q     Okay. How long have you been playing golf?

7           A     Fifteen years.

8           Q     Do you do it as a hobby?

9           A     Yes.

10          Q     Have you ever played golf professionally?

11          A     No.

12          Q     Okay. In your review of sports trade press,  
13 have you ever read articles about the benefits of  
14 sports for high school students?

15          A     Not that I'm aware of, no.

16          Q     Okay.

17                   MR. O'TOOLE: I'd like to introduce as  
18 Exhibit 1 -- which is tab 2, Sasha. It's an article  
19 from NFHS.

20                   Just let me know when you have it up in  
21 the Exhibit Share, Mr. Higgins.

22     //

1 (Exhibit 1 was marked for  
2 identification.)

3 THE WITNESS: Yes.

4 MR. O'TOOLE: You got it?

5 BY MR. O'TOOLE:

6 Q Have you seen this document before?

7 A Not that I'm aware of, no.

8 Q Okay. You can take the time to review it.  
9 I'm just going to sort of use this as a framework for  
10 our conversation.

11 A Mm-hmm.

12 Q If you can look at the first page, in the  
13 first paragraph, beginning with, "the NFHS"?

14 A Mm-hmm.

15 Q It says, "the NFHS, based in Indianapolis,  
16 Indiana, is the national leader and advocate for high  
17 school athletics, as well as fine and performing arts  
18 programs." Do you see that?

19 A Yes.

20 Q Okay. And then in the next paragraph, the  
21 first line says, "the NFHS writes playing rules for  
22 high school sports and provides guidance on a

1 multitude of national issues." Do you see that?

2 A Yes.

3 Q Is that generally consistent with your  
4 knowledge of what the NFHS does?

5 A Yes.

6 Q Okay. And then if you can go to the second  
7 page.

8 A Yes.

9 Q And the second paragraph, starting with,  
10 "participating"?

11 A Yes.

12 Q It says, "participating in high school  
13 athletics has long-lasting, definitive benefits,  
14 especially when athletic leaders create an environment  
15 that challenges and rewards the growth mindset." Do  
16 you see that?

17 A Yes.

18 Q Do you agree, generally, with that premise  
19 that participation in high school sports has  
20 definitive benefits for students?

21 A I do.

22 Q Okay. And what are some of those benefits

1     that you observed your students getting from playing  
2     sports?

3           A     As I said, with myself, I think discipline,  
4     accountability, responsibility, teamwork. These are  
5     all things that I preach to my kids that they'll need  
6     as they grow older.

7           Q     Great.

8           A     How to deal with adversity. Things of that  
9     nature.

10          Q     Mm-hmm. So resilience, for example?

11          A     Yes.

12          Q     Okay. And this may be obvious, but  
13     participating in high school sports also has physical  
14     benefits, correct?

15          A     Yes.

16          Q     What sorts of competitive skills do you  
17     think make a good basketball player?

18          A     What's their work ethic like, their  
19     determination. Really, that's -- to be a good  
20     basketball player in high school level, that's about  
21     all you really need. Can you work hard? And can  
22     you -- are you determined to get better?

1           Q     Also just like to go back to this article.  
2     In the third paragraph, it says, "three of the most  
3     important participation takeaways that students  
4     continue to practice after graduation are, one, a  
5     stronger sense of self-confidence in building  
6     relationships with others and having an expanded  
7     capacity for empathy; two, developing a better  
8     understanding of self and in so doing understanding  
9     how their actions affect others; and three, building  
10    foundations for lifelong fitness habits." Do you see  
11    that?

12           A     Yes.

13           Q     Do you generally agree that those are some  
14    of the benefits students may derive from participating  
15    in sports?

16           A     Yes. Yes.

17           Q     All right. Great. Back to basketball. In  
18    basketball, athletes often come into physical contact  
19    with one another; is that right?

20           A     Yes.

21           Q     So for example, if you and I were playing  
22    and you went for a shot and I hit you, you may --

1       there may a foul declared, correct?

2             A       Yes.

3             Q       And that physical interference could injure  
4       you or me, correct?

5             A       Yes.

6             Q       But you, in your personal capacity as a  
7       basketball player, you understand that risk of injury  
8       any time you take the court, right?

9             A       Yes.

10            Q       And you willingly take on that risk; is that  
11       right?

12            A       Yes.

13            Q       In golf, players generally don't come into  
14       physical contact with one another; is that right?

15            A       No.

16            Q       And that's because, generally, golfers take  
17       their turn to swing on a particular hole, right?

18            A       Yes.

19                    MS. JERNIGAN-JOHNSON: Object to the  
20       form.

21       BY MR. O'TOOLE:

22            Q       So it's rare for two golfers to end up

1 hitting each other, for example, right?

2 A Yes.

3 Q Okay. So would you say that in golf, the  
4 risk of injury due to physical contact is less than it  
5 is in basketball?

6 A Yes.

7 Q What competitive skills would you say make a  
8 good golfer?

9 A Determination, hard work, mental toughness.  
10 And then the physical attributes of being a good  
11 athlete -- swing speed, strength, etc., etc., etc.

12 MR. O'TOOLE: I'd like to introduce  
13 Exhibit 2. Sasha, that's tab 3. These are excerpts  
14 from the Farragut Golf Twitter account.

15 (Exhibit 2 was marked for  
16 identification.)

17 THE WITNESS: Okay.

18 MR. O'TOOLE: Just let me know when you  
19 have those up.

20 THE WITNESS: Yes.

21 BY MR. O'TOOLE:

22 Q Do you recognize these as excerpts from the



1 transgender student could not try out for your boys'  
2 golf team?

3 A No.

4 Q Okay.

5 MR. O'TOOLE: I'd like to introduce as  
6 Exhibit 6 -- it's tab 8, Sasha. Just let me know when  
7 you have it up.

8 (Exhibit 6 was marked for  
9 identification.)

10 THE WITNESS: Yes.

11 BY MR. O'TOOLE:

12 Q Have you seen this document before?

13 A Yes.

14 Q Okay. What do you know about this document?

15 A It's the Knox County's policy for sports.

16 Q Okay. And are you given this policy before  
17 the start of a new school year to review?

18 A No.

19 Q But this policy's accessible to you?

20 A Yes.

21 Q Okay. And how so?

22 A I -- I can go get it if I need to, but,

1 generally, we talk to Coach Dodgen. Dodgen -- Coach  
2 Dodgen lets us know new things we need to be on the  
3 lookout for.

4 Q Okay. So this is an example of a policy  
5 where you would check with Coach Dodgen to see to make  
6 sure that you were aligned with that policy; is that  
7 right?

8 MS. JERNIGAN-JOHNSON: Object to the  
9 form.

10 A This is a policy in which he tells us each  
11 year, "there's been changes to the policy."

12 Q Okay. So if you look at the top and, as you  
13 can see, in this document there's some red lettering  
14 and some black lettering. If you look at the top  
15 right-hand corner, there's a box called Review.

16 A Yep.

17 Q And 5-17 is crossed out.

18 A Mm-hmm.

19 Q And then 7 dash [sic] 21 looks like it's  
20 been added, right?

21 A Yes.

22 Q Do you understand that to mean July 21?

1           A     Yes.

2           Q     Okay. And in lines 15 to 18, there's some  
3 red text.

4           A     Yes.

5           Q     Do you understand that to be an addition to  
6 this policy?

7           A     Yes.

8           Q     Okay. And so it says here, "a student's  
9 gender for purposes of participation in middle or high  
10 school athletics is determined by the student's sex at  
11 the time of the student's birth."

12                   "A valid original birth certificate must be  
13 provided for this purpose." Do you see that?

14          A     Yes.

15          Q     When a policy changes, how quickly does  
16 Mr. Dodgen usually let you know that the policy has  
17 changed?

18          A     Not -- if it pertains to my sport, probably  
19 pretty soon.

20          Q     Okay. Now, is this policy sports-specific?

21          A     No.

22          Q     So it would apply to all sports, correct?

1           A     Yes.

2           Q     Okay. So this change it looks like was  
3 implemented in July 2021, right?

4           A     Mm-hmm, yes.

5           Q     So you would expect Mr. Dodgen to have  
6 informed you shortly thereafter of this policy change;  
7 is that right?

8           A     Probably at our coaches' meeting during that  
9 first week of school.

10          Q     Okay. And is the first week of school in  
11 August?

12          A     I think last year we started July 29th. So  
13 somewhere around there, yes.

14          Q     Okay. So around roughly July 2021 is when  
15 you would've seen this updated or been communicated  
16 this updated policy; is that --

17          A     Yes.

18          Q     -- accurate? Okay. Prior to this addition,  
19 did you ever require a student to present their birth  
20 certificate to try out for your golf team?

21          A     No.

22          Q     Do you currently require a student to

1 present their birth certificate to try out for your  
2 golf team?

3 A I have not.

4 Q Okay. Do you know of other coaches who  
5 have?

6 A I do not.

7 Q In your capacity as a Farragut High School  
8 coach though, you are obligated to comply with Knox  
9 County Board of Education policies, right?

10 A Yes.

11 Q Okay. So if you are not requiring a student  
12 to present their birth certificate, that may be a  
13 technical violation of this policy, right?

14 MS. JERNIGAN-JOHNSON: Object to the  
15 form.

16 A I'm not sure.

17 Q Under this policy, where it says, "a  
18 student's gender for purposes of participation in  
19 middle or high school athletics is determined by the  
20 student's sex at the time of the student's birth,"  
21 that means that if a student who was born female tries  
22 out for your boys' golf team, they are not eligible to

1 participate on that boys' golf team, right?

2 A Mmm. Based on that, yes.

3 Q Okay. And when you say, "yes," you mean  
4 they are not eligible, correct?

5 A Yes.

6 Q And under this policy, would you agree that  
7 a female student would not be eligible to try out for  
8 the football team?

9 MS. JERNIGAN-JOHNSON: Object to the  
10 form.

11 BY MR. O'TOOLE:

12 Q You can answer.

13 A I'm not sure.

14 Q What would be different between trying out  
15 for your boys' golf team and trying out for the  
16 football team?

17 A I'm not sure. I don't coach golf -- I mean  
18 coach football.

19 Q Okay. But with respect to your golf team,  
20 if a female student tried to try out for the boys'  
21 team, to comply with that policy, that female student  
22 would not be able to be eligible to try out for your

1 golf team, right?

2 MS. JERNIGAN-JOHNSON: Object to the  
3 form.

4 A For my boys' team, yes. They would not be  
5 eligible.

6 Q Okay. And you'll notice that there's some  
7 footnotes here; it's on the second page.

8 A Mm-hmm.

9 Q Footnote TCA --

10 A Yeah.

11 Q -- Section 496310 [sic].

12 A Yes.

13 Q Do you know what that's a reference to?

14 A No.

15 Q Okay. So before the addition of this  
16 language in red to the Knox County Board of Education  
17 policy, were you aware of any restrictions on  
18 transgender students' ability to try out for your golf  
19 team?

20 A No.

21 MS. JERNIGAN-JOHNSON: Object to the  
22 form.

1           A       No.

2           Q       What about trying out for any team at  
3       Farragut High School?

4                       MS. JERNIGAN-JOHNSON:   Object to the  
5       form.

6           A       I was not.

7           Q       And this addition to the policy -- strike  
8       that.

9                       This language in the Knox County Board of  
10       Education policy as revised differs from the language  
11       that was in Exhibit 5 -- the TSSAA Transgender  
12       Policy -- right?

13                      MS. JERNIGAN-JOHNSON:   Object to the  
14       form.

15                      MS. BERGMEYER:   Form.

16                      THE WITNESS:   Yes.

17                      MR. O'TOOLE:   Yeah.

18       BY MR. O'TOOLE:

19           Q       Because that TSSAA Transgender Policy would  
20       have allowed a student like L.E. to try out for your  
21       golf team if they met the eligibility requirements,  
22       right?



1 MS. BERGMEYER: -- to form.

2 A I'm not sure.

3 Q Okay. Let's go back to Exhibit 5. Just let  
4 me know when you have it open.

5 A I do.

6 Q Okay. So on the bottom of page 1, it says  
7 Steps Required for Consideration to Participate?

8 A Mm-hmm, yes.

9 Q And it lists a number of requirements,  
10 including Notice to the School, Notice to the  
11 TSSAA/TMSAA, Necessary Documentation, Referral to  
12 Gender Identity Eligibility Committee, and  
13 Notification, right?

14 A Yes.

15 Q And then above that, under Gender Identity  
16 Policy and [sic] Procedure, it says, "all students  
17 should have the opportunity to participate in  
18 TSSAA/TMSAA activities in a manner that is consistent  
19 with their gender identity, irrespective of the gender  
20 listed on a student's records," right?

21 A Yes.

22 Q And then it says, "once the student has been

1 granted eligibility to participate in the sport  
2 consistent with his or [sic] her gender identity, the  
3 eligibility is granted for the duration of the  
4 student's participate and does not need to be renewed  
5 every sports season or school year," right?

6 A Yes.

7 Q So under this policy, a student like L.E. --  
8 who identified as female but wants to try out for your  
9 boys' golf team -- would have been able to if they met  
10 these eligibility requirements, right?

11 MS. JERNIGAN-JOHNSON: Object to the  
12 form.

13 A That's what that means, yes.

14 Q Okay. But it's your understanding that  
15 under the revised Knox County Board of Education  
16 policy, that that is no longer true, right?

17 A Yes.

18 Q Mr. Higgins, are you aware of any student  
19 who has not been able to join either your team or  
20 another team at Farragut High School because their  
21 spot on the team was taken by a transgender student?

22 A I am not aware, no.

CERTIFICATE OF DEPOSITION OFFICER

I, JANEL B. FOLSOM, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

*Janel B. Folsom*

JANEL B. FOLSOM

Notary Public in and for the  
Commonwealth of Virginia

## CERTIFICATE OF TRANSCRIBER

I, ALICE AMUSIN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in cursive script, reading "Alice Amusin", followed by a horizontal line.

ALICE AMUSIN